**BEFORE THE APPEALS BOARD**
**FOR THE**
**KANSAS DIVISION OF WORKERS COMPENSATION**

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| **HEATHER FAY GROVER** | ) | |
| Claimant | ) | |
| | ) | |
| VS. | ) | |
| | ) | |
| **MORRIS COUNTY HOSPITAL** | ) | |
| Respondent | ) | Docket No. 1,009,231 |
| | ) | |
| AND | ) | |
| | ) | |
| **KS. HOSPITAL ASSOC. WCF INC.** | ) | |
| Insurance Carrier | ) | |

## ORDER

Claimant requests review of the May 15, 2003 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

### ISSUES

The Administrative Law Judge (ALJ) determined claimant suffered accidental injury and provided timely notice[1] but failed to provide timely written claim. Consequently, claimant was denied benefits.

The claimant requested review and argues respondent should be estopped from alleging failure to file timely written claim because claimant's supervisor refused to provide claimant with forms to fill out for a workers compensation claim and the supervisor told claimant that she did not have carpal tunnel syndrome. Claimant argues she detrimentally relied upon her supervisor's statements and did not pursue her claim.

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[1] At the conclusion of the preliminary hearing the ALJ ruled from the bench and noted "the Court is not making a finding on that fact [timely notice] and won't need to because it is clear that written claim was not timely." But the ALJ's Order noted "Notice was given within 10-days."

Respondent contends claimant neither gave timely notice of her alleged accidents nor provided timely written claim. Respondent notes claimant's supervisor denied claimant told her she suffered any work-related injuries; denied that claimant requested forms to fill out regarding any accidents; and, further denied that claimant was told she did not have carpal tunnel syndrome. Respondent argues that incident report forms were available by the time clock; that claimant had filed a previous claim and was aware of the procedure to report an accident and claimant failed to establish she was prejudiced by respondent in order to support an estoppel claim.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant was employed as a certified nursing assistant (CNA) for the respondent from November 1997 until May 10, 2002.[2] In approximately March 2001, claimant began to experience pain and numbness in both wrists and hands. On March 17, 2001, claimant sought treatment with Dr. Joel E. Hornung. The doctor diagnosed bilateral carpal tunnel syndrome.

The claimant testified that a few days after this office visit she reported her injury to Marsha Seymour, the respondent's nursing director. Claimant testified that she told Ms. Seymour that Dr. Hornung said her carpal tunnel was caused by work activities. She requested forms to fill out so that she could receive treatment. Claimant testified that Ms. Seymour told her that she did not have carpal tunnel and refused to provide forms. Claimant noted that she had prior accidents while working for respondent and when she went to Ms. Seymour on those occasions she had been provided paperwork to fill out regarding her accidents.

Ms. Seymour, respondent's nursing director, testified that the forms to fill out for a work-related accident are located by the time clock and available for anyone with a possible claim. Ms. Seymour denied claimant said that her wrist and hand problems were work-related. Ms. Seymour further denied telling claimant that she did not have carpal tunnel and could not pursue a worker's compensation claim.

Dr. Hornung's medical records indicate that the issue of causation for the claimant's carpal tunnel syndrome was first discussed with the claimant on May 15, 2001. Claimant continued to perform her regular job duties and continued to experience problems with her hands and wrists. Claimant's last office visit with Dr. Hornung was July 23, 2001.

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[2] The application for hearing indicated claimant's last day at work was May 10, 2002. At preliminary hearing she gave both May 15 and May 10 as her last day worked.

The claimant continued to work for respondent until May 10, 2002, when she voluntarily terminated her employment to take a better paying job selling new and used cars at an auto mall. Claimant agreed that she never made a written claim advising respondent she was injured and claiming benefits until her attorney sent respondent a letter dated February 17, 2003.

The controlling issue is whether the claimant gave timely written claim. Claimant alleged a series of work-related accidents through May 10, 2002, the last day she worked for respondent. In order to determine whether claimant's written claim was timely served, claimant's accident date will be treated as May 10, 2002.

K.S.A. 44-520a(a) provides for written claim to be served within 200 days of the accident date. The statute provides in pertinent part:

> No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation. . . .

The parties agree that written claim was provided respondent on February 17, 2003. Consequently, written claim was served more than 200 days but less than one year from claimant's date of accident. Under certain circumstances, the time period for serving written claim upon the employer may be extended to one year. K.S.A. 44-557(a) requires every employer to report accidents of which it has knowledge within 28 days of receiving such knowledge. Subsection (c) of K.S.A. 44-557 provides:

> (c) No limitation of time in the workmen's compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the director if the injured employee has given notice of accident as provided by K.S.A. 44-520 and amendments thereto, except that any proceeding for compensation for any such injury or death, where report of the accident has not been filed, must be commenced by serving amendments thereto within one year from the date of the accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendments thereto.

K.S.A. 44-557(a) states in part:

> It is hereby made the duty of every employer to make or cause to be made a report to the director of any accident, or claimed or alleged accident, to any employee which occurs in the course of the employee's employment and of which the employer or the employer's supervisor has knowledge, which report shall be made

> upon a form to be prepared by the director, within 28 days, after the receipt of such knowledge, if the personal injuries which are sustained by such accidents, are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained.

If claimant provided timely notice of the accident and if she was wholly or partially incapacitated for more than the remainder of the day, shift or turn on which she was injured, a failure to file an accident report would extend the written claim time to "one year from the date of the accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee . . ."

But the evidentiary record compiled to date does not establish whether an accident report was filed or that claimant was incapacitated "from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained" requiring respondent to file a report of accident.

Accordingly, the provisions of K.S.A. 44-557(c) extending the time period for serving written claim cannot be utilized. Claimant failed to serve written claim within 200 days as required by K.S.A. 44-520a, and her claim is, therefore, time-barred.

Claimant argues that respondent is estopped from relying upon the written claim defense because of the alleged comments made by Ms. Seymour that claimant did not have carpal tunnel and her alleged refusal to provide forms to report the alleged accident.

The Board acknowledges that the doctrine of equitable estoppel is applicable to workers' compensation proceedings.[3] However, to rely on such theory, it must be established that claimant was, by the acts, representations, admissions, or silence of the respondent when it had a duty to speak, induced to believe certain facts existed. Claimant must also show that he or she rightfully relied upon and acted upon such beliefs and would now be prejudiced if the other party were permitted to deny the existence of such facts.[4]

Assuming that Ms. Seymour made the comments attributed to her, which she denied, it is difficult to conclude claimant would rely on those statements and not proceed with her claim. Claimant had filed prior workers compensation claims with respondent and was familiar with the process to obtain treatment, she testified Dr. Hornung told her that her carpal tunnel syndrome was caused by her work activities and she had access to forms for reporting an accident.

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[3] *Marley v. M. Bruenger & Co., Inc.*, 27 Kan. App. 2d 501, 6 P.3d 421, *rev. denied* 269 Kan. 933 (2000).

[4] Id.

In ruling from the bench at the conclusion of the preliminary hearing the ALJ concluded "there was no detrimental reliance and there is no equitable estoppel that applies."[5] The ALJ had the opportunity to observe the claimant and Ms. Seymour testify. The ALJ did not believe claimant's version of the events and concluded there was no detrimental reliance. The Board generally defers to the ALJ's evaluation of credibility for witnesses who have testified before the ALJ. The Board's review of the record suggests it is reasonable to rely on the ALJ's determination of credibility in this case and doing so the Board concludes the Order should be affirmed.

## AWARD

**WHEREFORE**, it is the finding, of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated May 15, 2003, is affirmed.

**IT IS SO ORDERED.**

Dated this _____ day of July 2003.

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BOARD MEMBER

c: Neil Dean, Attorney for Claimant
Wade Dorothy, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[5] P.H. Trans. at 26.